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ACE AMERICAN INSURANCE COMPANY

11
12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 NEVADA TITLE COMPANY, a Nevada
corporation,

15 Plaintiff,

16 v.

17 ACE AMERICAN INSURANCE COMPANY, a
18 Pennsylvania corporation,

19 Defendant.

20 AND RELATED CROSS-ACTIONS.
21

Case No. 2:18-cv-1823-GMN-(VCF)

**THE PARTIES' STIPULATION
SEEKING THE COURT'S
PROTECTIVE ORDER AND
(PROPOSED) ORDER**

22 1. PURPOSES AND LIMITATIONS

23 Disclosure and discovery activity in this action are likely to involve production of confidential,
24 proprietary, or private information for which special protection from public disclosure and from use for
25 any purpose other than prosecuting or defending this litigation may be warranted. Accordingly, the
26 parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order.
27 The parties acknowledge that this Order does not confer blanket protections on all disclosures or
28 responses to discovery and that the protection it affords from public disclosure and use extends only to

1 the limited information or items that are entitled to confidential treatment under the applicable legal
2 principles and as outlined in Section 5.1 below. The parties further acknowledge, as set forth in Section
3 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information
4 under seal; Local Rule IA 10-5 sets forth the procedures that must be followed when a party seeks
5 permission from the court to file material under seal.

6 2. DEFINITIONS

7 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
8 information or items under this Order.

9 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
10 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
11 of Civil Procedure 26(c).

12 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
13 well as their support staff).

14 2.4 Designating Party: a Party or Non-Party that designates information or items that
15 it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

16 2.5 Disclosure or Discovery Material: all items or information, regardless of the
17 medium or manner in which it is generated, stored, or maintained (including, among
18 other things, testimony, transcripts, and tangible things), that are produced or generated in
19 disclosures or responses to discovery in this matter.

20 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent
21 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as
22 a consultant in this action.

23 2.7 House Counsel: attorneys who are employees of a party to this action. House
24 Counsel does not include Outside Counsel of Record or any other outside counsel.

25 2.8 Non-Party: any natural person, partnership, corporation, association, or other
26 legal entity not named as a Party to this action.

27 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
28 action but are retained to represent or advise a party to this action and have appeared in this

1 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
2 that party.

3 2.10 Party: any party to this action, including all of its officers, directors, employees,
4 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

5 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
6 Material in this action.

7 2.12 Professional Vendors: persons or entities that provide litigation support services
8 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
9 organizing, storing, or retrieving data in any form or medium) and their employees and
10 subcontractors.

11 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
12 "CONFIDENTIAL."

13 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
14 Producing Party.

15 3. SCOPE

16 The protections conferred by this Stipulation and Order cover not only Protected Material
17 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
18 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
19 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
20 However, the protections conferred by this Stipulation and Order do not cover the following
21 information: (a) any information that is in the public domain at the time of disclosure to a
22 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
23 a result of publication not involving a violation of this Order, including becoming part of the
24 public record through submission or filing without protection of any previously designated
25 Protected Material by the Designating Party in any court or with any other public entity, trial or
26 otherwise; and (b) any information known to the Receiving Party prior to the disclosure or
27 obtained by the Receiving Party after the disclosure from a source who obtained the information
28 lawfully and under no obligation of confidentiality to the Designating Party. Any use of

1 Protected Material at trial shall be governed by a separate agreement or order. Material
2 inadvertently disclosed while this Stipulation and Order is in effect without the applicable
3 designation, and later identified and determined to be Protected Material, is within the scope of
4 this Stipulation and Order.

5 4. DURATION

6 Even after final disposition of this litigation, the confidentiality obligations imposed by
7 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
8 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
9 claims and defenses in this action, with or without prejudice; or (2) final judgment herein after
10 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
11 action, including the time limits for filing any motions or applications for extension of time
12 pursuant to applicable law.

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
15 or Non-Party that designates information or items for protection under this Order must take care
16 to limit any such designation to specific material that qualifies under the appropriate standards
17 which include Federal Rule of Civil Procedure 26(c) as well as credible and genuine concerns
18 regarding confidentiality, proprietary information, trade secrets, and sensitive private
19 information. The Designating Party must designate for protection only those parts of material,
20 documents, items, or oral or written communications that qualify – so that other portions of the
21 material, documents, items, or communications for which protection is not warranted are not
22 swept unjustifiably within the ambit of this Order.

23 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
24 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
25 unnecessarily encumber or retard the case development process or to impose unnecessary
26 expenses and burdens on other parties) expose the Designating Party to sanctions.

27 If it comes to a Designating Party's attention that information or items that it designated
28 for protection do not qualify for protection, that Designating Party must promptly notify all other

1 Parties that it is withdrawing the mistaken designation.

2 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
3 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
4 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
5 designated before the material is disclosed or produced.

6 Designation in conformity with this Order requires:

7 (a) for information in documentary form (e.g., paper or electronic documents, but
8 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
9 Party affix the legend “CONFIDENTIAL” to each page that contains protected material. If only
10 a portion or portions of the material on a page qualifies for protection, the Producing Party also
11 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
12 margins). A Party or Non-Party that makes original documents or materials available for
13 inspection need not designate them for protection until after the inspecting Party has indicated
14 which material it would like copied and produced. During the inspection and before the
15 designation, all of the material made available for inspection shall be deemed
16 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and
17 produced, the Producing Party must determine which documents, or portions thereof, qualify for
18 protection under this Order. Then, before producing the specified documents, the Producing
19 Party must affix the “CONFIDENTIAL” legend to each page that contains Protected Material. If
20 only a portion or portions of the material on a page qualifies for protection, the Producing Party
21 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
22 margins).

23 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
24 Designating Party identify on the record, before the close of the deposition, hearing, or other
25 proceeding, all protected testimony.

26 (c) for information produced in some form other than documentary and for any other
27 tangible items, that the Producing Party affix in a prominent place on the exterior of the
28 container or containers in which the information or item is stored the legend

1 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
2 the Producing Party, to the extent practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If corrected within 60 days of the production
4 of a document, an inadvertent failure to designate qualified information or items does not,
5 standing alone, waive the Designating Party’s right to secure protection under this Order for such
6 material; provided, however, that for documents already produced the 60-day period shall not
7 begin to run until entry of this Order. Upon timely correction of a designation, the Receiving
8 Party must make reasonable efforts to assure that the material is treated in accordance with the
9 provisions of this Order.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
12 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
13 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
14 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
15 challenge a confidentiality designation by electing not to mount a challenge promptly after the
16 original designation is disclosed.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
18 process by providing written notice of each designation it is challenging and describing the basis
19 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
20 notice must recite that the challenge to confidentiality is being made in accordance with this
21 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
22 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
23 forms of communication are not sufficient) within 14 days of the date of service of notice. In
24 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
25 designation was not proper and must give the Designating Party an opportunity to review the
26 designated material, to reconsider the circumstances, and, if no change in designation is offered,
27 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
28 stage of the challenge process only if it has engaged in this meet and confer process first or

1 establishes that the Designating Party is unwilling to participate in the meet and confer process in
2 a timely manner.

3 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
4 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
5 Civil Local Rule IA 10-5 within 35 days of the initial notice of challenge or within 25 days of the
6 parties agreeing that the meet and confer process will not resolve their dispute, whichever is
7 earlier. Each such motion must be accompanied by a competent declaration affirming that the
8 movant has complied with the meet and confer requirements imposed in the preceding
9 paragraph. Failure by the Designating Party to make such a motion including the required
10 declaration within 35 days (or 25 days, if applicable) shall automatically waive the
11 confidentiality designation for each challenged designation. In addition, the Challenging Party
12 may file a motion challenging a confidentiality designation at any time if there is good cause for
13 doing so, including a challenge to the designation of a deposition transcript or any portions
14 thereof. Any motion brought pursuant to this provision must be accompanied by a competent
15 declaration affirming that the movant has complied with the meet and confer requirements
16 imposed by the preceding paragraph.

17 The burden of persuasion in any such challenge proceeding shall be imposed in a manner
18 consistent with the Federal Rules of Civil Procedure.. Frivolous challenges, and those made for
19 an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other
20 parties) may expose the Challenging Party to such sanctions as are authorized by the Federal
21 Rules of Civil Procedure. Unless the Designating Party has waived the confidentiality
22 designation by failing to file a motion to retain confidentiality as described above, all parties
23 shall continue to afford the material in question the level of protection to which it is entitled
24 under the Producing Party's designation until the court rules on the challenge.

25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
27 or produced by another Party or by a Non-Party in connection with this case only for
28 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be

1 disclosed only to the categories of persons and under the conditions described in this Order.
2 When the litigation has been terminated, a Receiving Party must comply with the provisions of
3 section 13 below (FINAL DISPOSITION).

4 Protected Material must be stored and maintained by a Receiving Party at a location and
5 in a secure manner that ensures that access is limited to the persons authorized under this Order.

6 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
7 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
8 disclose any information or item designated "CONFIDENTIAL" only to:

9 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
10 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
11 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
12 Bound" that is attached hereto as Exhibit A;

13 (b) the officers, directors, and employees (including House Counsel) of the
14 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
15 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

16 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
17 reasonably necessary for this litigation and who have signed the "Acknowledgment and
18 Agreement to Be Bound" (Exhibit A);

19 (d) the court and its personnel;

20 (e) court reporters and their staff, professional jury or trial consultants, mock jurors,
21 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
22 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

23 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
24 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
25 A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
26 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
27 separately bound by the court reporter and may not be disclosed to anyone except as permitted
28 under this Stipulated Protective Order.

1 (g) insurance regulators or reinsurers of defendant, pursuant to a valid request.

2 (h) the author or recipient of a document containing the information or a custodian or
3 other person who otherwise possessed or knew the information.

4 (i) for the avoidance of doubt, a Party need not inform any other Party of the fact that
5 a witness has signed Exhibit A prior to the time such witness is the subject of a notice of
6 deposition or has been identified as potential trial (fact or expert) witness.

7 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
8 LITIGATION

9 If a Party is served with a subpoena or a court order issued in other litigation that compels
10 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
11 Party must:

12 (a) promptly notify in writing the Designating Party. Such notification shall include a
13 copy of the subpoena or court order;

14 (b) promptly notify in writing the party who caused the subpoena or order to issue in
15 the other litigation that some or all of the material covered by the subpoena or order is subject to
16 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;
17 and

18 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
19 Designating Party whose Protected Material may be affected.

20 If the Designating Party timely seeks a protective order, the Party served with the
21 subpoena or court order shall not produce any information designated in this action as
22 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
23 issued, unless the Party has obtained the Designating Party’s written permission. The
24 Designating Party shall bear the burden and expense of seeking protection in that court of its
25 confidential material – and nothing in these provisions should be construed as authorizing or
26 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

1 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
2 LITIGATION

3 (a) The terms of this Order are applicable to information produced by a Non-Party in this
4 action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in
5 connection with this litigation is protected by the remedies and relief provided by this Order.
6 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
7 additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
9 Party's confidential information in its possession, and the Party is subject to an agreement with
10 the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

11 (1) promptly notify in writing the Requesting Party and the Non-Party that some
12 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

13 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
14 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
15 the information requested; and

16 (3) make the information requested available for inspection by the Non-Party.

17 (c) If the Non-Party fails to object or seek a protective order from this court within 14
18 days of receiving the notice and accompanying information, the Receiving Party may produce
19 the Non-Party's confidential information responsive to the discovery request. If the Non-Party
20 timely seeks a protective order, the Receiving Party shall not produce any information in its
21 possession or control that is subject to the confidentiality agreement with the Non-Party before a
22 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
23 burden and expense of seeking protection in this court of its Protected Material.

24 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
26 Material to any person or in any circumstance not authorized under this Stipulated Protective
27 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
28 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the

1 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
2 made of all the terms of this Order, and (d) request such person or persons to execute the
3 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

4 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
5 MATERIAL

6 When a Producing Party gives notice to Receiving Parties that certain inadvertently
7 produced material is subject to a claim of privilege or other protection, the obligations of the
8 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
9 provision is not intended to modify whatever procedure may be established in an e-discovery
10 order that provides for production without prior privilege review. Pursuant to Federal Rule of
11 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
12 communication or information covered by the attorney-client privilege or work product
13 protection, the parties may incorporate their agreement in the stipulated protective order
14 submitted to the court.

15 12. MISCELLANEOUS

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
17 seek its modification by the court in the future.

18 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
19 Order no Party waives any right it otherwise would have to object to disclosing or producing any
20 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
21 no Party waives any right to object on any ground to use in evidence of any of the material
22 covered by this Protective Order.

23 12.3 Filing Protected Material. Without written permission from the Designating Party
24 or a court order secured after appropriate notice to all interested persons, a Party may not file in
25 the public record in this action any Protected Material. A Party that seeks to file under seal any
26 Protected Material must comply with Local Rule IA 10-5. Protected Material may only be filed
27 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
28 issue. If a Receiving Party's request to file Protected Material under seal pursuant to Local Rule

1 IA 10-5 is denied by the court, then the Receiving Party may file the information in the public
2 record unless otherwise instructed by the court.

3 13. FINAL DISPOSITION

4 Within 60 days after the final disposition of this action and notice from any Party, as
5 defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing
6 Party or destroy such material. As used in this subdivision, "all Protected Material" includes all
7 copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of
8 the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving
9 Party must submit a written certification to the Producing Party (and, if not the same person or
10 entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where
11 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the
12 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other
13 format reproducing or capturing any of the Protected Material. Notwithstanding this provision,
14 Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,
15 and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
16 reports, attorney work product, and consultant and expert work product, even if such materials
17 contain Protected Material. Any such archival copies that contain or constitute Protected
18 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20
21 [signatures on next page]
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27
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1 DATED: November 11, 2019

LAW OFFICES OF STEVEN J. PARSONS

2 By: /s/ Steven J. Parsons

3 STEVEN J. PARSONS

4 Nevada Bar No. 363

Attorney for Plaintiff

NEVADA TITLE COMPANY

5
6 Dated: November 11, 2019

COZEN O'CONNOR

7
8 By: /s/ Dina R. Richman

9 DINA R. RICHMAN

10 *Admitted Pro Hac Vice*

Attorneys for Defendant

ACE AMERICAN INSURANCE COMPANY

11
12
13 **ORDER**

14 Upon the forgoing STIPULATION, **IT IS SO ORDERED.**

15 DATED: 11-12-2019

16 _____



17 _____
18 U.S. ~~DISTRICT~~/MAGISTRATE JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print or
4 type full address], declare under penalty of perjury that I have read in its entirety and understand
5 the Stipulated Protective Order that was issued by the United States District Court for the District
6 of Nevada on [date] in the case of *Nevada Title Company v. ACE American Insurance Co.*, Case
7 No. 2:18-cv-01823-GMN-VCF. I agree to comply with and to be bound by all the terms of this
8 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
9 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
10 not disclose in any manner any information or item that is subject to this Stipulated Protective
11 Order to any person or entity except in strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the District of
13 Nevada for the purpose of enforcing the terms of this Stipulated Protective Order, even if such
14 enforcement proceedings occur after termination of this action.

15 I hereby appoint _____ [print or type full name] of
16 _____ [print or type full address and telephone
17 number] as my Nevada agent for service of process in connection with this action or any
18 proceedings related to enforcement of this Stipulated Protective Order.

19 Date: _____

20 City and State where sworn and signed: _____

21 Printed name: _____

22
23 Signature: _____
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26
27
28